

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2002-0027

FOR

ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF

VINTAGE GREENS LLC
FOR VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
STATE WATER BOARD ORDER NO. 98-08DWQ
WDID NO. 149S314411

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. On September 1, 2000, Vintage Greens LLC was issued a notice of permit coverage under the statewide General National Pollutant Discharge Elimination System construction storm water permit, Water Quality Order 99-08-DWQ, ID No. 149S314411, for construction of the Windsor Soccer Fields project, a 15-acre site located on Mitchell Road (1/2 mile west of Highway 101) in Windsor, Sonoma County, California (Site).
2. Site construction commenced during the fall of 2000. The construction project involved extensive site grading and soil movement. On October 29, 2001, Regional Water Board staff (staff) performed an erosion/sediment control inspection for the site and found that no erosion or sediment controls had been constructed. Staff voiced concerns about the lack of onsite controls to two construction workers onsite. The workers were made aware of the specific risk of turbid storm water runoff discharges into the drop inlets onsite, all of which were constructed and connected to Poole Creek, a tributary of Windsor Creek. They were advised that it was imperative that erosion and sediment controls immediately be placed on the exposed fields. The construction workers stated that they would immediately transmit staff's concerns to the permittee, Mr. Martin Nelson.
3. Staff re-inspected the Site on October 30, 2001. No erosion or sediment control work had been performed. The inspection revealed that heavy rains that had begun an hour before the inspection had caused significant erosion of soils directly into the storm drainage system and into Poole Creek.
4. The following facts are the basis for the alleged violations in this matter:
 - a. This soccer field project was required by the Town of Windsor as a result of the Vintage Greens project, a residential subdivision, located immediately across the railroad tracks to the west. The soccer field site had been 100 percent graded for a period of months.
 - b. All of the storm drainage system was installed and operational.

- c. During two onsite inspections, staff observed that no erosion and sediment controls had been installed.
- d. Absent any erosion or sediment controls, the functioning storm drainage system ensured that turbid runoff during a sustained period of heavy rainfall would discharge to receiving waters.
- e. Staff noted significant volumes of sediment-laden storm water runoff discharging from the Site into the onsite storm drainage system.
- f. Staff noted significant volumes of sediment laden storm water runoff discharging from the soccer field site via a surface drainage system, that drained via culvert beneath the railroad tracks that border the site's west boundary.
- g. The attached photographs depict Site conditions during the rainfall event of October 30, 2001. Turbid water is shown discharging into drop inlets onsite, and discharging offsite through a culvert that passes beneath the adjacent railroad tracks.
- h. Water Quality Order No. 99-08-DWQ, which is applicable to this project, contains the following Discharge Prohibition:

“A.3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

And the following Receiving Water Limitations:

“B.1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.

B.2. The [Storm Water Pollution Prevention Plan (SWPPP)] developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board's Basin Plan.

- i. Observations by staff on October 30, 2001, confirmed that conditions of pollution and/or nuisance were occurring as a result of sediment-laden storm water runoff discharged from this facility. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section A.3, by discharging storm water runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.
- j. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section B.1, by discharging sediment-laden storm water runoff into Poole Creek, a tributary of Windsor Creek, in amounts that had short-term adverse impacts to the environment.
- k. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section B.2, by not implementing its SWPPP so as to minimize or eliminate the discharge of storm water

runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.

1. Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to California Water Code Section 13243 or Article 1 of Chapter 5. As detailed above, SCWA violated the discharge prohibitions and requirements of Water Quality Order No. 99-08-DWQ. Section 13385(c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against SCWA in this matter is calculated as follows:

One day of observed discharge violations that occurred on October 30, 2001.

One day of discharge X \$10,000 per day = \$10,000

Total Potential Civil Liability: \$10,000

A significant volume of turbid storm water runoff discharged from the Site into state waters. However, the discharge volume associated with these violations has not been determined.

5. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation; and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
 - a) Nature, circumstances, extent and gravity of the violation: Vintage Greens LLC's erosion and sediment control efforts onsite were non-existent at the time of the October 30, 2001 inspection. The completed storm drainage system allowed unimpeded discharges of sediment laden storm water runoff to receiving waters. Staff observed significant sediment discharges from the Site for a short period of time (approximately 60-90 minutes).
 - b) Violator's ability to pay: Staff has no information to indicate that the violator would be unable to pay any imposed administrative civil liability.

- c) Prior history of violations: Staff has no prior history of similar violations related to Vintage Greens LLC's construction projects.
 - d) Degree of culpability: Vintage Greens LLC is the construction storm water permit holder and developer of the project and, as such, it is responsible for permit compliance. Had Vintage Greens LLC timely installed and maintained erosion and sediment controls, offsite discharges to receiving waters could have been significantly minimized.
 - e) Economic benefit: Economic benefit derived from avoiding the installation of adequate erosion and sediment controls until early November were minimal.
 - f) Other matters that may justice may require: Vintage Greens LLC personnel indicated that the Town of Windsor required changes onsite that pushed back project completion. However, erosion and sediment controls should have been installed to prevent violations at all times during construction, regardless of delays in scheduled construction.
6. The issuance of this complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).
7. Based on a review of the facts and the required factors, the Executive Officer of the Regional Water Board is issuing this Complaint with a proposed administrative civil liability in the amount of 3,000 dollars (\$3,000.00). This amount is due and payable within 30 days of the date of this Complaint.

Waiver of Hearing

8. You may waive the right to a future hearing. If you wish to waive the hearing, please check and sign the waiver and return it together with a cashier's check or money order, made payable to the "State Water Resources Control Board" for \$3,000.00 within 15 days of receipt of this complaint to the California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 95403. This settlement will not become effective until after a 30-day public comment period.

Ordered by _____
Susan A. Warner
Executive Officer

February 21, 2002